IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 24011 of 2004

Between:

Devareddy Srilakshmi, W/o.Devareddy Srinivasulu Reddy,
R/o.Patimitta Village, Yakasiri Post, Chittamuru Mandal,

Nellore District.

... PETITIONER

AND

1 The Joint Collector Cum Settlement Oflficer, Nellore District.
2 The Special Commissioner and Director of Settlements,

Government of Andhra Pradesh, Hyderabad.
3 The Mandal Revenue Officer Ozili Mandal, Nellore District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or an order, more particularly one in the nature of a writ of Mandamus, declaring the orders passed by the 1st respondent in D.Dis (E10)/3608/2004, dt.20.8.2004 as illegal and arbitrary as opposed to principles of natural justice, unconstitutional and consequently direct the 1st Respondent to consider the legitimate claim of the petitioner for a Ryotwari Patta.

Counsel for the Petitioner: MR.SIVARAJU SRINIVAS

Counsel for the Respondents: GP FOR REVENUE

The Court, at the admission stage, made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue for the respondents.

Assailing the order dated 20-8-2004, passed by the first respondent – Joint Collector-cum-Settlement Officer, refusing to condone the delay in filing claim petition, the petitioner earlier filed writ petition in W.P. No. 18959 of 2004, which by order dated

16-11-2004, was dismissed, making the following order:

The petitioner filed the present writ petition challenging the order passed by the first respondent – Joint Collector – cum – Settlement Officer, Nellore District, in refusing to condone the delay for filing for fling his appeal/application on the ground that in G.O.Ms.No.400, Revenue (J.A.) dated 24-04-1993, the second proviso to sub rule (4) of Rule 2 of the Andhra Pradesh (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Grant of Ryotwari patta Rules, 1973, has been deleted, which is arbitrary and illegal.

It is well settled that in the process of legislative competence, natural justice has no role to play since deletion of a particular proviso from the statute book is only a legislative process.

It is not the case of the petitioner that the respondents should not have legislative competence to delete such provision and the law made by the State legislature can be struck down by Courts only on two grounds namely, lack of legislative competence and violation of any of the fundamental rights guaranteed in part III of the Constitution or of any other constitutional provision and there is no third ground as held by the Apex Court in **STATE OF A.P. AND OTHERS V. MC.DOWELL AND COMPANY AND OTHERS.**

In view of the same, I do not see any ground to entertain the writ petition. However, the petitioner is at liberty to file an appeal against the order passed by the first respondent before the appellate authority and on filing such an appeal, it is for the appellate authority to consider whether the claim of the petitioner can be considered or not irrespective of the deletion of the above rule and whether the first respondent is justified in refusing to condone the delay. The petitioner can as well avail the remedy under proviso to Section 3 of the A.P. (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Act, 1948.

The writ petition is accordingly dismissed. No costs.

Assailing the very same order dated 20-8-2004, passed by the first respondent, refusing to condone the delay in filing the claim petition; the petitioner filed the present writ petition. The learned counsel for the petitioner submits that the impugned order dated 20-8-2004, passed by the first respondent refusing to condone the delay in filing the claim petition on the ground the second proviso to sub-rule (4) of Rule 2 of the Rules, which was added to sub-rule (4) of Rule 2 vide G.O. Ms. No. 551, Revenue (J) Department, dated 19-5-1986, bestowing power to entertain the claim petition by condoning delay, was deleted by the Government vide orders issued in G.O. Ms. No. 400, Revenue (J.A.) Department, dated

24-4-1993, cannot be sustained, for the reason that though G.O. Ms. No. 400, dated 24-4-1993, which deleted the second proviso to sub-rule (4) of Rule 2 of the Rules, yet the first proviso to sub-rule (4) of Rule 2 of the Rules, which was added vide G.O. Ms. No. 551, dated 19-5-1986, which provided that the Settlement Officer may, for good and sufficient reasons shown by the applicant, entertain an application filed before him after the period of thirty days aforesaid, was not deleted.

He submits that inasmuch as the petitioner unaware of the fact the first proviso to sub-rule (4) of Rule 2 of the Rules, which provided that the Settlement Officer may, for good and sufficient reasons shown by the applicant, entertain an application filed before him after the period of thirty days aforesaid, was not deleted, and proceeded on the presumption that the power to condone the delay was totally removed vide G.O. Ms. No. 400, dated 24-4-1993, as is evidenced from the prayer made by him to the effect "to strike down G.O. Ms. No. 400, Revenue (J.A.) Department, dated 24-4-1993", holding it to be illegal, arbitrary and opposed to principles of natural justice", he submits that the writ petition should be entertained and the impugned order is required to be set aside as it has been passed without application of mind.

The petitioner by filing this writ petition, by taking pleas which he had not taken earlier in the earlier writ petition, filed by him, which was dismissed by a learned Judge of this Court, admittedly, is seeking review of the order passed therein, which cannot be entertained, and more so having regard to the judgement of the apex Court in **Forward Construction Co. v. Prabhat Mandal (Regd,), Andheri.** Be that as it may, a reading of the order dated
16-11-2004 passed in W.P. No. 18959 of 2004, would disclose that the learned Judge while dismissing the writ petition, gave liberty to file an appeal against the order passed by the first respondent, when such liberty was given to him, it was always open to the petitioner to put forth the pleas which he sought to raise in the writ petition before the appellate authority, and certainly, another writ petition praying for the relief, which was refused in the earlier writ petition, cannot be entertained, and more so on the grounds taken in the writ petition.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J

December 23, 2004

MRR / TVK

Copy to:

1 The Joint Collector cum Settlement Officer, Nellore District
2 The Special Commissioner & Director of Settlements,

Government of Andhra Pradesh, Hyderabad
3 The Mandal Revenue Officer, Ozili Mandal, Nellore District

4 Two C.C. s to the G.P. for Revenue, High Court Buildings,

Hyderabad (OUT)

5 Two C.D. Copies.